

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

THOMAS SIKES,	)	Case No. ED CV 14-0849-PJW
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of the	)	
Social Security Administration,	)	
	)	
Defendant.	)	

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I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his application for Supplemental Security Income ("SSI"). He claims that the Administrative Law Judge ("ALJ") erred when she failed to consider the opinion of a treating physician and when she discounted Plaintiff's testimony. For the following reasons, the Court affirms the ALJ's decision.

II. SUMMARY OF PROCEEDINGS

In May 2008, Plaintiff applied for SSI, alleging that he had been disabled since June 2007, due to severe back and leg pain and degenerative joint disease. (Administrative Record ("AR") 305-13,

1 330.) His application was denied initially and on reconsideration and  
2 he requested and was granted a hearing before an ALJ. In November  
3 2009, he appeared with counsel and testified at the hearing. (AR 86-  
4 125.) In January 2010, the ALJ issued a decision denying benefits.  
5 (AR 128-36.) Plaintiff then sought review by the Appeals Counsel,  
6 which granted his request and remanded the case with instructions to  
7 obtain additional vocational evidence. (AR 141-42.)

8 On remand, the same ALJ held a new hearing in February 2011 and  
9 issued a second decision, also concluding that Plaintiff was not  
10 disabled. (AR 49-85, 143-50.) Plaintiff appealed to the Appeals  
11 Council, which again granted review and remanded the case for  
12 supplemental vocational evidence. (AR 154-56.)

13 On December 17 2012, a different ALJ held a hearing. (AR 23-48.)  
14 On March 18, 2013, she issued a decision denying benefits. (AR 6-16.)  
15 Plaintiff appealed to the Appeals Council, which denied review. (AR  
16 1-5.) Thereafter, he filed the instant action.

### 17 III. ANALYSIS

#### 18 A. The ALJ's Finding that Plaintiff was not Credible

19 At the December 2012 administrative hearing, Plaintiff testified  
20 that he is in such pain that he could walk barely a block before  
21 having to stop and rest for 30 minutes and could shop for groceries  
22 only if an electric cart was available. (AR 31-32, 35-36.) He also  
23 testified that he had difficulty climbing up a three- or four-inch  
24 step at his house. (AR 33.) Plaintiff complained that his  
25 prescription medication affected his memory, coordination, and mood,  
26 making him angry at times. (AR 33-34.)

27 The ALJ discounted this testimony because she found that these  
28 impairments had not caused him to stop working, he made inconsistent

1 statements about his illegal drug use, and his allegations of pain and  
2 limitation were inconsistent with the objective medical evidence. (AR  
3 12.) Plaintiff argues that the ALJ erred in doing so. For the  
4 following reasons, the Court affirms the ALJ's credibility  
5 determination.

6 ALJs are tasked with judging a claimant's credibility. *Andrews*  
7 *v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). In doing so, they can  
8 rely on ordinary credibility techniques. *Smolen v. Chater*, 80 F.3d  
9 1273, 1284 (9th Cir. 1996). Where there is no evidence of  
10 malingering, however, ALJs can only reject a claimant's testimony for  
11 specific, clear, and convincing reasons that are supported by  
12 substantial evidence in the record. *Garrison v. Colvin*, 759 F.3d 995,  
13 1014-15 (9th Cir. 2014).

14 The ALJ's first reason for rejecting Plaintiff's testimony--that  
15 Plaintiff had not stopped working as a result of his pain--is  
16 specific, clear, and convincing and is supported by substantial  
17 evidence in the record. Plaintiff testified at the November 2009  
18 hearing that he quit his photocopier repair job in 2007 because he had  
19 a difference of opinion with the manager. (AR 89-92.) At the  
20 February 2011 hearing, he claimed that he was laid off from that job.  
21 (AR 54.) The inconsistent answers aside, the ALJ was entitled to rely  
22 on the fact that Plaintiff stopped working for reasons other than  
23 being disabled as a basis for questioning Plaintiff's testimony that  
24 his impairments precluded him from working. *See Hensley v. Colvin*,  
25 600 Fed App'x 526, 527 (9th Cir. 2015) (upholding ALJ's finding that  
26 claimant's testimony that she could not work was undermined by the  
27 fact that she stopped working by choice, not because she was unable to  
28 continue); and *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001)

1 (affirming ALJ's adverse credibility finding based in part on fact  
2 that claimant left his job because he was laid off, not because he  
3 could no longer work).

4 The ALJ also questioned Plaintiff's testimony because she  
5 believed that he had made inconsistent statements about his drug use.  
6 Although inconsistencies in a claimant's testimony are a legitimate  
7 reason for discounting the testimony, this finding is not supported by  
8 substantial evidence in the record.

9 At the November 2009 hearing, the ALJ asked Plaintiff, "any drugs  
10 or alcohol in the last several years?" The transcript does not record  
11 any response from Plaintiff, but the ALJ evidently accepted his answer  
12 was no. (AR 92.) Later in the hearing, Plaintiff testified again  
13 that he did not do drugs, but acknowledged that he had used drugs in  
14 the past, which was why he had been in prison. (AR 114.) He said  
15 that he had used methamphetamine "pretty regularly back then," but had  
16 not done so since being released in 2007. (AR 114-15.)

17 At the February 2011 hearing, the same ALJ asked Plaintiff, "use  
18 any drugs or alcohol?", to which Plaintiff replied no. (AR 55.) At  
19 the December 2012 hearing, the new ALJ did not ask Plaintiff whether  
20 he had ever used drugs.

21 Based on this record, the Court is unable to conclude that  
22 Plaintiff's answers concerning his drug use were inconsistent or  
23 untrue. To the contrary, Plaintiff consistently responded that he had  
24 used drugs in the past, but had not used them since 2007. Thus, this  
25 reason for questioning Plaintiff's testimony is rejected.

26 Finally, the ALJ found that Plaintiff's allegations were not  
27 supported by the medical records, pointing out that the results of a  
28 consultative examination performed in January 2013 undermined his

1 claims of severe limitations. (AR 12.) This is a valid reason for  
2 questioning a claimant's testimony, *see, e.g., Osenbrock v. Apfel*, 240  
3 F.3d 1157, 1165-66 (9th Cir. 2001) (upholding ALJ's credibility  
4 determination in part because medical evaluations revealed little  
5 evidence of disabling abnormality alleged by claimant), and it is  
6 supported by substantial evidence.

7 On January 21, 2013, consulting orthopedic surgeon Vicente  
8 Bernabe reviewed medical records and examined Plaintiff. (AR 535-39,  
9 541.) Dr. Bernabe noted that Plaintiff did not appear to be in any  
10 distress and "moved freely in and out of the office and around the  
11 examination room" with the help of a cane, although Dr. Bernabe  
12 determined that the cane was not medically necessary. (AR 535-37.)  
13 Although he noted some tenderness in Plaintiff's lumbar spine and  
14 observed that X-rays showed mild to moderate narrowing of the L5-S1  
15 disc space, Dr. Bernabe's examination results were otherwise  
16 unremarkable. (AR 537-38.)

17 The ALJ was entitled to contrast the orthopedic surgeon's  
18 findings that Plaintiff appeared to move without pain and his  
19 impairments were relatively minor with Plaintiff's testimony one month  
20 earlier that he could not walk more than a block or climb a four-inch  
21 step and use the discrepancy as a basis for finding him less than  
22 credible.

23 In the end, the Court accepts two of the reasons offered by the  
24 ALJ for questioning Plaintiff's testimony and rejects one. The Court  
25 further finds that the ALJ's error regarding Plaintiff's statements  
26 about his drug use does not undermine her overall credibility  
27 determination and, therefore, it is affirmed. *See Carmickle v.*  
28 *Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (holding

1 error by ALJ in credibility determination is harmless "[s]o long as  
2 there remains substantial evidence supporting the ALJ's conclusions .  
3 . . and the error does not negate the validity of the ALJ's"  
4 determination." ).

5 B. The Treating Opinion

6 Plaintiff contends that the ALJ erred by rejecting the opinion of  
7 his primary treating physician David Lanum. For the following  
8 reasons, the Court finds that the ALJ did not err.

9 It is the province of the ALJ to resolve conflicts in the medical  
10 evidence. *Andrews*, 53 F.3d at 1039. Generally speaking, three types  
11 of doctors supply that evidence: treating doctors, examining doctors,  
12 and reviewing doctors. All other things being equal, treating  
13 doctors' opinions are entitled to the greatest weight because they are  
14 hired to cure and have more opportunity to know and observe the  
15 patient. *Id.* at 1041; see also 20 C.F.R. 416.927(d)(2) ("Generally,  
16 we give more weight to opinions from your treating sources, since  
17 these sources are likely to be the medical professionals most able to  
18 provide a detailed, longitudinal picture of your medical impairment(s)  
19 and may bring a unique perspective to the medical evidence that cannot  
20 be obtained from the objective medical findings alone or from reports  
21 of individual examinations"). Examining doctors are next on the list,  
22 followed by reviewing doctors. See *Lester v. Chater*, 81 F.3d 821,  
23 830-31 (9th Cir. 1995). ALJs, however, are not required to merely  
24 accept the opinion of any doctor and, where the opinion is  
25 contradicted, may reject it for specific and legitimate reasons that  
26 are supported by substantial evidence in the record. *Id.* at 830.

27 In a July 2, 2010 report, Dr. Lanum assessed Plaintiff with  
28 chronic low back pain that required ongoing medication for pain

1 management, a history of chest pain, and chronic active hepatitis C.  
2 He concluded that Plaintiff "should be considered disabled at this  
3 time." (AR 522.) The ALJ rejected this opinion, relying instead on  
4 the January 2013 opinion of examining surgeon Bernabe and the opinions  
5 of the state agency reviewing doctors, all of whom found that  
6 Plaintiff could perform at least light work. (AR 13-14, 449-53, 469-  
7 70, 539.) The ALJ cited three reasons for rejecting Dr. Lanum's  
8 opinion: (1) it was not supported by objective clinical findings;  
9 (2) it was a blanket conclusion; and (3) Dr. Lanum appeared simply to  
10 be adopting Plaintiff's subjective complaints. (AR 13.) These are  
11 specific and legitimate reasons for rejecting Dr. Lanum's July 2010  
12 opinion. *See, e.g., Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
13 1190, 1195 (9th Cir. 2004) (holding ALJ may discount treating opinion  
14 that is conclusory, brief, and unsupported by record as a whole);  
15 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (holding ALJ  
16 may rejecting treating opinion that is based on claimant's self  
17 reports that have properly been discounted). And they are supported  
18 by substantial evidence in the record.

19 Dr. Lanum's July 2010 conclusion that Plaintiff was disabled is  
20 not supported by his treatment notes, which reflect that Plaintiff's  
21 symptoms were generally unremarkable and controlled by his  
22 medications. Dr. Lanum first treated Plaintiff in June 2008, at which  
23 time he noted Plaintiff's complaints of chronic back pain and  
24 diagnosed him with "mid effused degenerative disc disease," with some  
25 bilateral neural foraminal stenosis. (AR 391-92.) At a follow-up in  
26 July 2008, Dr. Lanum again noted Plaintiff's complaints of back pain,  
27 which he found to be consistent with an MRI of the lumbar spine that  
28 showed stenosis. (AR 468.) In October 2008, after Plaintiff

1 complained that Norco alone was not controlling his back pain, Dr.  
2 Lanum prescribed Piroxicam. (AR 516.) In March 2009, Plaintiff  
3 reported that the Piroxicam had helped but complained that his  
4 hepatitis C medication was causing flu-type symptoms and fatigue and  
5 he had developed a rash. (AR 500.) In May 2009, Plaintiff reported  
6 that his current medications were "doing well for his pain control,"  
7 though the fatigue and flu symptoms were persisting. (AR 490.) In  
8 July 2009, Plaintiff reported a brief episode of chest pain, but  
9 denied any other acute symptoms. (AR 485.) Plaintiff had follow-up  
10 visits in December 2009 and February 2010, at which time he complained  
11 of continued back pain, but Dr. Lanum merely refilled his  
12 prescriptions, noting that there was "no real trauma." (AR 525.) In  
13 March 2010, Dr. Lanum reviewed X-rays of Plaintiff's thoracic spine  
14 and hips, which were "essentially unremarkable." (AR 524.) These  
15 treatment notes taken as a whole do not support his July 2010  
16 conclusion that Plaintiff was disabled.

17 Furthermore, at no time did Dr. Lanum indicate what, if any,  
18 functional limitations Plaintiff might have as a result of his back  
19 pain and hepatitis C. None of his treatment notes remotely suggested  
20 that Plaintiff was in such pain that he was not able to walk a block  
21 or more, or climb up steps, as Plaintiff alleged in 2012.

22 The ALJ was not required to accept Dr. Lanum's conclusion that  
23 Plaintiff was disabled. See *Batson*, 359 F.3d at 1195 (holding  
24 treating physician's determination of disability is not binding on an  
25 ALJ). This is particularly true where, as here, Dr. Lanum's opinion  
26 appeared to be based in large measure on Plaintiff's subjective  
27 complaints--which the ALJ rejected--and it was contradicted by Dr.  
28 Bernabe's examination findings. Because the ALJ provided specific and



1 legitimate reasons for rejecting Dr. Lanum's controverted opinion, the  
2 Court affirms her decision.

3 IV. CONCLUSION

4 For these reasons, the ALJ's decision is affirmed and the case is  
5 dismissed with prejudice.

6 IT IS SO ORDERED.

7 DATED: August 21, 2015.



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8 PATRICK J. WALSH  
9 UNITED STATES MAGISTRATE JUDGE  
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